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**FEB 20 2007**

In re Application of  
Jerry Pelletier et al  
Application No. 09/454,252  
Filed: February 2, 1999  
Attorney Docket No. 248/037

: **OFFICE OF PETITIONS**  
:  
: **DECISION DISMISSING PETITION**  
: **UNDER 37 CFR 3.81(b)**  
:

This is a decision on the petition, filed August 22, 2006, which is being treated as a request under 37 CFR 3.81(b)<sup>1</sup> to add the assignee's name on the Issue Fee Transmittal Form PTOL-85(b) so that the Letters Patent will issue to the assignee.

The request is **dismissed**.

Petitioner states that the assignee's name is PhageTech, Inc. and that PhageTech, Inc. was unintentionally included on Fee Transmittal Form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner herein requests that the patent issue to PhageTech, Inc.

37 CFR 3.81(b), effective June 25, 2004, reads:

*After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The instant request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). As petitioner has failed to comply with the provisions of 37 CFR 3.81(a), the request cannot be granted.

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<sup>1</sup> See Official Gazette of June 22, 2004




**After issuance of the instant application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth PhageTech, Inc., as the assignee. No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in the instant request. A copy of this decision must accompany the request for a Certificate of Correction.**

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in the instant request, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Alternatively, if petitioner desires to have the correct assignee data appear on the front page of the Letters Patent, petitioner may wish to consider filing a petition to withdraw the subject application from issue under 37 CFR 1.313(c)(2). The petition to withdraw from issue under 37 CFR 1.313(c)(2) must be accompanied by a request for continued examination (RCE) and submission (which may be a request under 37 CFR 3.81(b)).

**The authorization to charge petitioner's Deposit Account No. 50-0872 is not accepted.**  
Wesley B. Ames and Foley & Lardner LLP are not on the provided deposit account.

Inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210. After the submission by petitioner of the request for a certificate of correction to add the assignee data on the front page of the Letters Patent, any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

  
Irvin Dingle  
Petitions Examiner  
Office of Petitions